

>>> "mastiff law" <mastifflaw@earthlink.net> 07/21/03 08:42PM >>>

<Under MCR 3.977, birth parents who wish to appeal a trial court's decision terminating their parental rights, but who cannot afford an attorney, may ask the trial judge to appoint an attorney for them. The proposed changes shorten the deadline for requesting the appointment of counsel from 21 to 14 days. In addition, the changes would impose a new 14-day deadline for the trial judge to enter an order appointing counsel. The chief judge of the court would "bear primary responsibility for ensuring that the appointment is made within the deadline," the rule proposal states.

Another change calls for a new subrule to MCR 3.977 that would have the trial court's order appointing counsel also function as the claim of appeal. Trial courts would use a single form, to be approved by the State Court Administrative Office, as a combined order of appointment, trial court transcript order, and claim of appeal. The trial court "must immediately send" the form to the Court of Appeals, accompanied by "a copy of the judgment or order being appealed, and a copy of the complete register of actions in the case." The staff comment to the rule states that the proposal "is designed to substantially accelerate the commencement of appeals by having the appointment order also act as a claim of appeal in cases in which the request for a lawyer was timely." The appointed attorney is not required to file anything more to perfect the claim of appeal. The staff comment further states that "Defects in the filing of the claim of appeal in the Court of Appeals must be corrected by the trial court but do not affect the validity of the filing."

Another change to MCR 3.977 states that the trial court "must" order transcripts for the appeal "at public expense" if the court determines that the parent is not able to pay for the transcripts. The current version of the rule states that the court "may" do so. A proposed change to MCR 7.204 tracks changes to MCR 3.977 by shortening the time to request appointment of appellate counsel in civil cases to 14 from 21 days. The Supreme Court will hold a public hearing on the proposed court rule amendments before making a final decision. The hearing has not yet been scheduled. The schedule and agendas for public hearings are posted on the Court's website, www.courts.michigan.gov/supremecourt. In addition, interested persons may send comments to the Clerk of the Supreme Court in writing; the deadline for doing so is November 1, 2003. Comments may be e-mailed to MSC_clerk@courts.mi.gov; letters may be sent to P.O. Box 30052, Lansing, Michigan 48909. Please refer to ADM File No. 2003-25 when submitting a comment.>

I'm extraordinarily happy to see these changes. For years, I have been requesting that the court develop the automatic claim of appeal system in juvenile cases just as they have been doing for years in criminal cases. I raised it again as recently as the last training session for Wayne County Juvenile Court attorneys, when an appeals court representative was present. I have one concern: Parents who are incarcerated. If their attorney doesn't request an appeal for them and referees and judges are lax or speed through reciting appellate rights, they may not understand and thereby lose their appellate rights due to jurisdiction. It isn't reasonable to automatically file appeals for all of these people, some may not want it. I think the court

should automatically send an appeal form to those incarcerated, similar to the form that criminal defendants receive and sign following conviction...a notice of appellate rights.

Thank you

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